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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 **ViaSat, Inc.,**  
13 *a Delaware corporation,*

14 Plaintiff  
15 and Counter Defendant,

16 v.

17 **Acacia Communications, Inc.,**  
18 *a Delaware corporation,*

19 Defendant  
20 and Counter Claimant  
21

Case No. 3:16-cv-00463-BEN-JMA

**Order Amending the Protective Order**

Dis. Judge: Hon. Roger T. Benitez  
Hon. Magistrate Jan M. Adler

Case Initiated January 21, 2016

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24 Upon Consideration of the Joint Motion to Amend Protective Order, filed by  
25 Defendant and counterclaimant Acacia Communications, Inc. and plaintiff and  
26 counterclaim defendant ViaSat, Inc., in the above-captioned matter, IT IS ORDERED  
27 that the Stipulated Protective Order (Dkt. 29) is hereby amended. The following  
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1 provisions shall be incorporated into the Stipulated Protective Order (Dkt. 29) as  
2 paragraphs 14 and 15:

3 14. **Source Code.** The Producing Party may designate documents, information,  
4 or things as “CONFIDENTIAL SOURCE CODE-ATTORNEY’S EYES ONLY  
5 INFORMATION,” which shall mean litigation material of a Producing Party or of any  
6 non-parties that a Producing Party is permitted to produce in this litigation that  
7 constitutes or contains non-public Source Code.

8 (a) “**Source Code**” shall mean source code and object code (*i.e.*, computer  
9 instructions and data definitions expressed in a form suitable for input to an  
10 assembler, compiler, or other translator). For avoidance of doubt, this includes  
11 source files, make files, intermediate output files, executable files, header files,  
12 resource files, library files, module definition files, map files, object files, linker  
13 files, browse info files, and debug files.

14 (b) Materials designated as “CONFIDENTIAL SOURCE CODE—  
15 ATTORNEY’S EYES ONLY INFORMATION,” shall only be reviewable by  
16 SOURCE CODE QUALIFIED PERSONS. **SOURCE CODE QUALIFIED**  
17 **PERSONS** include the following: (1) Outside Counsel of Record as necessarily  
18 incident to the litigation; (2) the Court and its personnel; (4) court reporters,  
19 stenographers and videographers transcribing or recording testimony at  
20 depositions, hearings or trial in this matter; (5) the author or recipient of a  
21 document containing the information; (6) Experts of the Receiving Party who  
22 have complied with the requirements of 7.3 and 7.4 of this Protective Order,  
23 exclusive of designated employee experts of either Party; and (7) personnel of  
24 Outside Counsel of Record or a Professional Vendor as necessary to set up the  
25 source code for inspection as detailed herein.

26 (c) Source Code shall be provided with the following additional protections:  
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- 1           (i)     Nothing in this Protective Order shall obligate the parties to produce any  
2                 Source Code, nor act as an admission that any particular Source Code is  
3                 discoverable.
- 4           (ii)    Access to Source Code will be given only to SOURCE CODE  
5                 QUALIFIED PERSONS.
- 6           (iii)   Access to Source Code shall be provided on a “stand-alone” computer  
7                 (that is, the computer may not be linked to any network, including a local  
8                 area network (“LAN”), an intranet, or the Internet and may not be  
9                 connected to any storage device other than the internal hard disk drive of  
10                the computer). The stand-alone computer shall run a reasonably current  
11                version of an operating system such as Apple OS X, Microsoft Windows,  
12                Linux, or Sun OS. The stand-alone computer shall be kept in a secure  
13                location at the offices of the Producing Party’s Outside Counsel of  
14                Record, or at such other location as the Producing Party and Receiving  
15                Party mutually agree. Each stand-alone secure computer may be  
16                password protected and shall have the Source Code stored on a hard  
17                drive contained inside the computer. The Producing Party shall produce  
18                Source Code in a format that is easily readable and that is searchable  
19                using the tools installed on the stand-alone computer. The stand-alone  
20                computer shall, at the Receiving Party’s request, include reasonable  
21                analysis tools appropriate for the type of Source Code. These tools shall  
22                not have the ability to compile or run the code. The Receiving Party shall  
23                be responsible for providing the tools or licenses to the tools that it  
24                wishes to use to the Producing Party so that the Producing Party may  
25                install such tools on the stand-alone computer.
- 26           (iv)   The Receiving Party shall be permitted to access to the stand-alone  
27                secure computer during normal business hours, which for purposes of  
28                this Paragraph shall be 9:00 a.m. through 6:00 p.m. local time at the

1 reviewing location. Upon reasonable notice from the Receiving Party,  
2 which shall not be less than three (3) business days in advance, the  
3 Producing Party shall make reasonable efforts to accommodate the  
4 Receiving Party's request for access to the computer outside of normal  
5 business hours. The parties agree to cooperate in good faith such that  
6 maintaining the Source Code at the offices of the Producing Party's  
7 Outside Counsel of Record shall not unreasonably hinder the Receiving  
8 Party's ability to efficiently conduct the prosecution or defense in this  
9 litigation. The parties reserve their rights to request access to the Source  
10 Code at the site of any hearing or trial. Proper identification of all  
11 SOURCE CODE QUALIFIED PERSONS shall be provided prior to  
12 any access to the stand alone secure computer.

13 (v) All SOURCE CODE QUALIFIED PERSONS who will review Source  
14 Code on behalf of a Receiving Party shall be identified in writing to the  
15 Producing Party at least seven (7) business days in advance of the first  
16 time that such person reviews such Source Code. Such identification shall  
17 be in addition to any disclosure required under paragraph 14(B) of this  
18 Protective Order. The Producing Party shall provide these individuals  
19 with information explaining how to start, log on to, and operate the  
20 stand-alone computer in order to access the produced Source Code on  
21 the stand-alone secure computer. For subsequent reviews by SOURCE  
22 CODE QUALIFIED PERSONS, the Receiving Party shall give at least  
23 one business day (and at least 24 hours) notice to the Producing Party of  
24 such review.

25 (vi) No person other than the Producing Party may alter, dismantle,  
26 disassemble or modify the stand-alone computer in any way, or attempt  
27 to circumvent any security feature of the computer.  
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(vii) No copies shall be made of Source Code, whether physical, electronic, or otherwise, other than volatile copies necessarily made in the normal course of accessing the Source Code on the stand-alone computers, except for: (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 14(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the Court may order. No outside electronic devices, including but not limited to laptop computers, USB flash drives, zip drives, or devices with camera functionalities shall be used in the same room as the stand-alone computers. The Producing Party may exercise personal supervision from outside the review room over the Receiving Party when the Receiving Party is in the Source Code review room. Such supervision, however, shall not entail review of any work product generated by the Receiving Party, *e.g.*, monitoring the screens of the stand-alone computer, monitoring any surface reflecting any notes or work product of the Receiving Party, or monitoring the key strokes of the receiving party. There will be no video supervision by any Producing Party.

(viii) Nothing may be removed from the stand-alone computers, either by the Receiving Party or at the request of the Receiving Party, except for (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 14(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the Court may order.

(ix) The Producing Party shall provide the Receiving Party with a stand-alone printer to print excerpts of the Producing Party's Source Code that the Receiving Party believes in good faith are necessary to understand a relevant feature of an accused product. At the end of each day of review of Source Code, the Producing Party shall collect all printed pages from

1 the Receiving Party. Three (3) business days later, the Producing Party  
2 shall either provide one (1) hard copy print out of the Source Code  
3 printed by the Receiving Party or, if the Producing Party objects in any  
4 manner to the production of the requested Source Code (*e.g.*, the request  
5 is too voluminous), it shall state its objection within five (5) business days  
6 pursuant to this paragraph. In the event of a dispute, the parties will meet  
7 and confer within five (5) business days of the objection being raised and  
8 if they cannot resolve it the parties will raise it with the court. For the  
9 avoidance of doubt, the Receiving Party shall not use the Producing  
10 Party's provided printer to print anything other than unmodified excerpts  
11 of the Producing Party's source code.

- 12 (x) Hard copy print outs of Source Code shall be provided on bates  
13 numbered and watermarked or colored paper that does not unreasonably  
14 impact the legibility of the Source Code printed on them, clearly labeled  
15 CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY  
16 INFORMATION on each page and shall be maintained by the Receiving  
17 Party's Outside Counsel of Record or SOURCE CODE QUALIFIED  
18 PERSONS in a secured locked area. The Receiving Party may also  
19 temporarily keep the print outs at: (a) the Court for any proceedings(s)  
20 relating to the Source Code, for the dates associated with any  
21 proceeding(s); (b) the sites where any deposition(s) relating to the Source  
22 Code are taken, for the dates associated with the deposition(s); and (c)  
23 any intermediate location reasonably necessary to transport the print outs  
24 (*e.g.*, a hotel prior to a court proceeding or deposition). The Receiving  
25 Party shall exercise due care in maintaining the security of the print outs  
26 at these temporary locations. No further hard copies of such Source  
27 Code shall be made and the Source Code shall not be transferred into any  
28 electronic format or onto any electronic media except that:

1           1.     The Receiving Party is permitted to make up to three (3) additional  
2     hard copies for use at a deposition. No Source Code shall be marked as an  
3     exhibit to any deposition; instead, the deposition transcript shall identify the  
4     exhibit by its production numbers. At the conclusion of a deposition, the  
5     Receiving Party shall be responsible for collecting and destroying all copies of  
6     Source Code brought to or used at a deposition.

7           2.     The Receiving Party's counsel may attach the minimum number of  
8     necessary copies, including scanned copies, of portions of Source Code  
9     to court filings as necessary and in the manner required by the Court's  
10    rules, procedures, and orders. To the extent portions of Source Code are  
11    quoted in a court filing, either (1) the entire document will be stamped  
12    and treated as CONFIDENTIAL SOURCE CODE—ATTORNEY'S  
13    EYES ONLY INFORMATION; or (2) those pages containing quoted  
14    Source Code will be separately stamped and treated as  
15    CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY  
16    INFORMATION.


17    (xi)   Nothing in this Protective Order shall be construed to limit how a  
18    Producing Party may maintain material designated as CONFIDENTIAL  
19    SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION.

20    (xii)   Outside Counsel of Record for the Receiving Party with custody of  
21    CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY  
22    INFORMATION shall maintain a source code log containing the  
23    following information: (1) the identify of each person granted access to  
24    the CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES  
25    ONLY INFORMATION; and (2) the first date on which such access  
26    was granted. Outside Counsel of Record for the Receiving Party will  
27    produce, upon request, each such source code log to the Producing Party  
28    within twenty (20) days of the final judgment in the litigation.

1           15.           No prejudice. The private parties agree that entering into this  
2                   Protective Order Addendum is without prejudice to any party's rights to  
3                   propose, request or otherwise move for different provisions relating to  
4                   Source Code production in the litigation or any other litigation, action or  
5                   proceeding.

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7                   IT IS SO ORDERED.

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9           Dated: February 27, 2017

  
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Hon. Jan M. Adler  
United States Magistrate Judge